WP(C) 2461/2005
BEFORE

THE HON’BLE MR JUSTICE N.KOTISWAR SINGH

Heard Mr. P N Goswami, learned counsel appearing for the petitioner.

[2] This writ petition has been filed for quashing the F.I.R foisted against the petitioner under Section 120-B/468/506/34 IPC which was registered as Panbazar P.S Case No. 106/2005. A copy of the F.I.R is annexed at Annexure-A/10 to the writ petition. The said F.I.R is reproduced herein below for better appreciation.

To
The Officer-in-Charge,
Panbazar Police Station,
Guwahati-781 001.
Dated Ghy the, 21st March, 2005.

FILING OF FIR

Subject:-

1) Criminal conspiracy for fraudulently taking decision to hand over Public property owned by the Assam State Text Book Production and Publication Corporation Limited situated in Panbazar near Over bridge to M/S Buds Creation Pvt. Ltd., Managing Director, Manoj Kr. Jalan.

2) Life threat given by Shri Akshay Mazumdar, Managing Director, ASTPC and Shri Manoj Kr. Jalan, Managing Director, Buds Creation Pvt. Lt.

Sir,

I was an employee of above Corporation as manager (Establishment) and was looking after the official works related to proposed Construction of multistoried Commercial cum Office Complex w.e.f. 09.12.2004 upto 12.01.2005 in addition to my other normal duties. Suring the Techno Commercial Bid on 31.12.2004 which started from 2.30 P.M. I noticed that M/S Buds Creation (P) Ltd. was not eligible for participation in 2nd price Bid as his documents are manipulated and he has not completed a single project of Rs. 5 crores as need and has worked as Supervisory by changing his commission Rs. 10 lacs. The matter was pointed out that Balance Sheet 31.03.2004 is not audited and various irregularities exist which should be pointed in the Board meeting dated 12.10.2005 then Managing Director threatened me and warned me to remove from service on 12.01.2005 it was decided to allot the work to M/S Buds Creation (P) Ltd. The present Managing Director Shri Akshay Mazumdar sent one Assamese boy of age 32-33 years who threatened me to face dire consequences if allotted work is disrupted on 12.01.2005 in the evening on query said person told that he is a business partner of M./S Buds Creation (P) Ltd. but it may not be genuine.

Seeing no other alternative I decided to resign from the Corporation & I decided give one notice on 25.01.2005 as Managing Director was harassing me and was continuously issuing orders to sent me outside Head quarter, Guwahati. So that allotment work is not jeopardized. I was released from Corporation in advance instead of 31.03.2005 on 28.02.2005. He maligned my image by publishing an advertisement on 01.03.2005 in daily news paper ’Agradoot’ showing that I have been terminated from my service after serving from 04.02.2005 upto 28.02.2005 but in reality I served the Corporation w.e.f. 05.02.2004 upto 28.02.2005 and he filed on Caveat by wasting Corporation’s money.

Now my family life, my life is not safe as all the matter is in public knowledge.

Yours faithfully,

(Kamalesear Das.) ,
Ex-Minister(Establishment)ASTPC
Jantia, Near D.P.I Office, Janakpur,
Jantia Path, Guwahati-781 019.

[3] Learned counsel for the petitioner stated that no case has been made out under Section 468 of the IPC regarding the allegation against the petitioner. What is alleged in the aforesaid FIR is that one of the bidders in a tender namely, M/S Buds Creation (P) Ltd. was not eligible for participation in 2nd price Bid as his documents were manipulated and has not completed a single project of Rs. 5 Crores as needed and has worked as Supervisor by charging his commission Rs. 10 lacs. Even if the allegations against the said firm is taken to be true, there is nothing to indicate that the petitioner is involved with the aforesaid manipulation.

[4] Secondly, as regards Section 506 of IPC it has been stated that the petitioner had threatened the complainant through one boy with dire consequences if allotted work is disrupted. The learned counsel pointed out the aforesaid provision of Section 506 of IPC is a cognizable offence and stated that under Section 155(2) of Cr. PC, no cognizance
could be taken by the police without the order of the Magistrate. In the present case no such order was obtained from the concerned Magistrate and the police initiated the aforesaid process by registering as case under 506 of IPC.

[5] The Hon’ble Apex Court in the State of Haryana & Ors. -vs- Bhajanlal & Ors.: 1992 Supp (1) SCC 335 has laid down the principles on which the High Court could intervene in exercise of powers under Article 226 of the Constitution of India or Section 482 of Cr.PC to interfere with the case of police investigation. The relevant portions are quoted hereunder:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of extraordinary power under Article 226 or the inherent powers under Section 482 of the Code with we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under and order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR dot not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding in manifestly attended with male fide and/or where proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

[6] As stated above, even if the FIR is taken at face value, no case

has been made out against the petitioner as regards the charge under Section 468 IPC. Further, no cognizable offence is made out against the petitioner under the aforesaid FIR. It is also not on record that the said FIR was registered as regards Section 506 IPC on the basis of any order of the Magistrate concerned.

[7] In view of the above decision rendered in the State of Haryana & Ors. (supra), this Court is of the view that no case has been made out in the present case for continuing police investigation as per the FIR lodged by the complainant. Accordingly, the FIR under Section 120-B/468/506/34 IPC registered as Pan Bazar P.S. Case No.106/5002 is set aside and the present writ petition is allowed.